

Beyond UC migration – current challenges and future changes

Issues after migration to UC

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Erosion of the transitional element

This section looks at the circumstances in which the transitional element can be eroded (reduced) in a universal credit (UC) award, some of the issues that arise and successful challenges to date.

Erosion over time

The Universal Credit (Transitional Provisions) Regulations 2014 SI No. 1230 (UC (TP) Regs) sets out the rules.

The UC (TP) Regs regulation 52 provides for a transitional element to be included in the calculation of the UC award in certain circumstances. It is then treated as an additional amount to be included in the UC maximum amount.

The UC (TP) Regs regulation 55 provides for erosion of the transitional element by the amount of 'any relevant increases' from the second assessment period onwards. A 'relevant increase' means an increase in any elements that make up the UC maximum amount. Each year the April uprating, and any rent increases, mean that the transitional element is eroded.

Points to note:

- The transitional element is not eroded by increases in the childcare element (regulation 55(4)).
- If a limited capability for work (LCW) element is replaced by a limited capability for work-related activity (LCWRA) element, the transitional element is eroded by the difference between the elements (regulation 55(5))
- The transitional element is not eroded by increases in elements in the first assessment period, by increases in earnings, or by losing elements (eg, child element when a young person leaves education)

Moving from specified or temporary to mainstream accommodation

A successful case *SSWP v JA (UC) [2024] UKUT 52 (AAC)* led to a new regulation 55(5A) being inserted from 1 June 2025:

"There is to be no "relevant increase" with respect to the inclusion of a housing costs element in a case where the claimant was entitled to an award of housing benefit in respect of specified accommodation or temporary accommodation within the month ending with the first day of the assessment period in which the housing costs element is included."

The Judge found that the claimant had been treated differently as a person moving from specified accommodation to mainstream accommodation, compared to someone who moves from mainstream rented accommodation to another cheaper mainstream rented property. He found that there was a breach of human rights where such a move meant the transitional element was eroded and the claimant was left worse off than on legacy benefits.

The change in the law means that if you were getting housing benefit for specified or temporary accommodation in the month before the assessment period in which a UC housing costs element is added, there is no erosion of the transitional element.

If the assessment period in which the housing costs element was included began on or after 1 June 2025, then you can use the above regulation to correct any wrong decisions about the

erosion of the transitional element. However, if the assessment period in which the housing costs element was included began before 1 June 2025, you may need to rely on the case law instead.

Since the decision was made on 19 February 2024, the DWP has been actioning cases of the same circumstances as the Upper Tribunal decision of which they are made aware. The determination of the Upper Tribunal does not affect decisions made by the SSWP before 19 February 2024.

Carer gaining LCWRA element

The case of *SSWP v MJ (UC) [2025] UKUT 035 (AAC)* was a challenge by a claimant (represented by CPAG) who was in receipt of the carer element and transitional SDP element, and was later found to have limited capability for work-related activity (LCWRA). The Secretary of State for Work and Pensions (SSWP) policy was to erode her transitional SDP element by the full amount of the LCWRA element. The UT allowed the SSWP's appeal and re-made the First-tier Tribunal decision in MJ's favour, finding that she had been unlawfully discriminated against (in breach of her rights under Article 14 (the right not to be discriminated against) read with Article 1 to the First Protocol (the right to peaceful enjoyment of possessions, including welfare benefits) of the European Convention on Human Rights).

The addition of the LCWRA element resulted in the removal of MJ's carer element and also eroded MJ's transitional SDP element in its entirety, meaning she was worse off following being found to have LCWRA (her award went from being £975 from the previous assessment period to being £879.98).

The Upper Tribunal accepted that MJ was:

1. Treated less favourably than someone who is not a carer who subsequently gets LCWRA; and
2. Treated less favourably than someone who is receiving a transitional element and has LCWRA, who subsequently becomes a carer.

The outcome is that MJ's transitional SDP element is eroded by the difference between the carer element and the LCWRA element, rather than by the full amount of the LCWRA element.

Upper Tribunal Judge West said:

"The Secretary of State has, yet again in the context of transitionally protected claimants, completely failed to address, still less justify, the differential treatment of which complaint is made. Instead [the SSWP's] submissions are largely dedicated to defending an irrelevant issue, namely why a person cannot receive the carer element and the LCWRA element at the same time. But that is not MJ's complaint. Her complaint is that she is treated less favourably than other transitionally protected claimants, who are not subject to a reduction in benefit entitlement by virtue of a change in their circumstances which increases their needs." (para 69)

Two remedies were proposed:

- 1) to read the "the sum of any relevant increases" in regulation 55(2)(c) of the UC (TP) Regs, read with reg 55(4), as meaning the *actual increase in award attributable to*

elements included in the award (here the difference between the LCWRA element and the carer's element); or

- 2) to disapply or "blue-pencil" the words "any of the amounts that are included in" in regulation 55(4) of the UC (TP) Regs

There are some cases where the decision maker cannot revise, but in all cases where those are then appealed, the First-tier Tribunal can in fact put things right (and the decision maker should ask them to). Based on updated guidance, issued on 28 October 2025, the advice to claimants is now as follows:

Claimants whose UC transitional element was reduced by the full amount of the LCWRA element from some date before 29 January 2025:

- Where an 'any grounds' revision application is made within 13 months of the original decision, the decision maker will be unable to revise the decision in the claimant's favour due to the effect of section 27 of the Social Security Act 1998 (the 'anti-testcase rule').
- However, any appeal lies not against the refusal to revise but against the original decision to reduce the UC transitional element by the full amount of the LCWRA element. A First-tier Tribunal deciding such an appeal is not caught by section 27 as the decision under appeal to it was made before 29 January 2025. This Tribunal can give a full remedy - so that the UC transitional element is only reduced by the difference between the LCWRA element and carer element effective from when the LCWRA element was added.

Claimants whose UC was reduced by the full amount of the LCWRA element but for a period on or after 29 January 2025:

- Decisions like this are simply wrong - the decision maker should have applied *SSWP v MJ* and only eroded the transitional element by the excess of LCWRA over carer element.
- On revision (including official error revision) the decision maker should reverse their decision (and if they do not then on appeal the First-tier Tribunal should do so).

Increases from the first assessment period

A UC award can be changed by revision if it was wrong at the time it was made, or by a supersession if it was correct at the time it was made but became incorrect later eg, because circumstances changed. Full backdating to the start of an award is only possible with a revision.

Often, when the DWP is notified of mistakes in a UC award, they do a supersession rather than a revision (or supersede from the wrong date). For example, if notified of a missing element, the DWP often adds this from the assessment period in which they are notified, and does not consider whether it should be added from an earlier date. Examples include wrong or missing housing costs, missing caring responsibilities, or missing a disabled child element.

This can cause erosion of the transitional element. But if the award changes from the first assessment period, it will not cause erosion of the transitional element. Where appropriate advisers should assist claimants to clearly request a revision from the first assessment period, with reasons for lateness, and to appeal if unsuccessful.

Changes that end transitional protection

Overview

Once someone has migrated to UC, there are a number of circumstances that can end transitional protection, or more specifically, particularly entitlement to the transitional element and a capital disregard (previous tax credit claimants only – see below). These are found primarily in regulation 56 Universal Credit (Transitional Provisions) Regulations 2014 ('TP Regs 2014'). The circumstances are:

- If earnings in the first assessment period of the UC award were above the administrative earnings threshold (AET) that then applied, and then fall below that AET for 3 consecutive assessment periods; *or*
- If someone was migrated from working tax credits to UC when over state pension age, and after a 12-assessment period grace period their earnings have dropped below the monthly equivalent to 16 times the national minimum wage a week for 3 consecutive assessment periods; *or*
- If a claimant was awarded transitional protection as part of a couple or a single person, and they either cease to be part of that couple or become part of a new couple

Regulation 57 TP Regs 2014 also contains provisions about when entitlement to a transitional protection ends, but in addition circumstances when it can be included again in a new UC award:

- Where there is transitional protection with an award of UC, it ends when that award ends, eg if the claimant inherits capital taking them over the £16,000 threshold or the claimant fails the habitual residence test; *or*
- Where UC is not awarded on migration, there is no transitional protection in any further UC award
- But where either of the two bullet points above apply, if the reason the UC award ended or was not made was due to the claimant's earnings being too high, if reclaimed within three months then any new UC award is treated as a continuation of the previous award (if it had been made) and transitional protection is included

In addition, if a claimant has transitional protection in the form of the 12-assessment period capital disregard, that ends if their capital falls below the £16,000 in any assessment period.¹

More details of the above follow.

Capital disregard

Transitional protection in the form of the 12-assessment period capital disregard only applied to those migrating from tax credits (with or without other legacy benefits).² It does not apply more generally to others who have migrated to UC but who did not have a tax credits award when they did. For those in the latter group, their UC award will end, and their transitional element together with it, if their capital exceeds the normal upper limit of £16,000 after they are first awarded UC.

¹ Reg 51(3) TP Regs 2014

² Reg 51 TP Regs 2014

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For those who the capital disregard applies to, it ends after 12-assessment periods, not 12 months. This can be important in the very limited circumstances where a UC award might end but a new award can include transitional protection again (ie, where the previous award ended due to earned income, but the claimant requalifies again within 3 months – see below).

In addition, this form of transitional protection ends if the claimant's capital drops below £16,000 in an assessment period.³ So even if they would otherwise have been within the 12-assessment periods, if their capital again exceeds £16,000, their UC award will end.

Couples

If someone has been getting UC as part of a joint claim couple or as a single claimant, and either that couple separate or the claimant becomes part of a new couple, their previous UC award ends. They either need to make or can be treated as making a new claim for UC, either as a couple or as a single person.⁴ In either case, if transitional protection was included with their previous award, both regulations 56(4) and 57(1) TP Regs 2014 means it cannot be included with the new award.

There is one exception to this rule found in regulation 56(4)(b). If someone has been awarded UC including transitional protection as a single claimant, but is joined by a partner who does not qualify for UC themselves such that the other partner can still get UC as a single claimant⁵, then the UC award can continue to include transitional protection. Despite the partner joining them, they are still treated as making a single UC claim, elements awarded on that basis, although with the excluded partner's income and capital taken in to account, but with transitional protection. The excluded partner's presence can also affect the conditionality applied to the claimant.

This will apply to single UC claimants joined by a partner who, for example, is a person subject to immigration control or maintained by a religious order. It will not apply if the partner joining the claimant is normally excluded from UC as someone receiving education or due to them being over pension age, as in either of those circumstances UC is still awarded to them as a joint claim couple.

Bereavement

If a couple have a joint award of UC and one of them dies, any new award of UC to the surviving partner will not include transitional protection. That is the effect of both regulation 56(4) and 57(1) TP Regs 2014.

However, in cases of bereavement, regulation 37 UC Regulations 2013 says that the award continues to be paid to the surviving partner using the same elements during both the assessment period in which the partner died, and the following two. As such, while a transitional element will not be included in any new award to the surviving partner, it should still be included during this 'run on' period. If A transitional element is not included during this period, the surviving partner should ask for a mandatory reconsideration and then appeal if necessary.

³ Reg 51(3) TP Regs 2014

⁴ Reg 9 Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013,

⁵ Reg 3(3) UC Regulations 2013

The loss of the transitional element for the surviving partner may mean a substantial drop in their income after the run on period. It may be arguable that not including the transitional element in a new single UC award to the surviving partner is discriminatory and/or fails to meet the policy objective that those migrating from legacy benefits to UC should not be worse off. CPAG is not aware of any current challenges on this basis.

The administrative earnings threshold

Where a migrated single claimant or joint claimants have earned income in the first assessment period of their UC award at or above the 'administrative earnings threshold' (AET) that applied to them at that time, their transitional protection ends if their earnings fall below that AET in three consecutive subsequent assessment periods. The AET is defined in regulation 99(6) UC Regulations 2013 and is currently set at the equivalent of 18 times the national minimum wage a week for a single person (£952 a month) and 29 times the national minimum wage a week for a couple (£1534 a month). 'Earnings' are as defined in regulation 55 UC Regulations 2013 (so include payments such as statutory sick and maternity pay) and 'monthly earnings' in regulations 2 and 90(6) as those before any deductions for tax, national insurance and pensions contributions ie, gross earnings.

The calculation of the AET has changed over the years, and also increased as the national minimum wages does, but what determines the application of this rule is the AET that applied during the claimant's first assessment period following migration from their legacy benefits. It is only if the claimant's earnings drop below that AET, not the current one, for three consecutive assessment periods that transitional protection is removed. DWP clarified this in 2023 when it added paragraph 3 to regulation 56 TP Regs 2014.

This rule is not triggered if the claimant earned below the AET in the first assessment period and subsequently earns above it.⁶ However, it does apply regardless of the conditionality group the claimant is in, whether that is full, partial or no work-related requirements. Also, those who the 'minimum income floor' applies to, or it would do other than for the application of a 'start-up period', are treated as earning over the AET that applies to them.⁷

A slightly different rule applies to those who were migrated from working tax credits (WTC) while over state pension age to UC.⁸ This group's earnings threshold is set at the equivalent of 16 times the national minimum wage a week, ie the minimum level of earnings they would have had to have to get WTC while over state pension age. If their earnings fall below this level (which is not set at that which applied when they first migrated to UC) for three consecutive assessments periods, then any transitional protection ends. However, there is a 12-assessment period 'grace period' before this can apply, so the earliest transitional protection could be removed is at the end of the 13th assessment period after migration. If transitional protection is removed, this group might then choose to claim pension credit and housing benefit, rather than UC.

When transitional element can be included in new award

⁶ Reg 56(2)(a)(ii) and (b)(ii) TP Regs 2014

⁷ Reg 56(3)(b) TP Regs 2014. Note, for the minimum income floor to apply, a claimant must first have been determined to be 'gainfully self-employed'

⁸ Reg 56(3A) TP Regs 2014

Where a UC award that included transitional protection ends, or UC was not awarded on migration, and the reason for this is that the claimant's earned income was too high, if UC is reclaimed and awarded within 3 months, it is treated as a continuation of the previous award and transitional protection is again included.⁹ The 3 months runs from the end of what would have been the last assessment period of the previous award if it had not ended, or where no award was made the end of what would have been the first assessment period.¹⁰

In such cases, DWP will presumably apply regulation 32A Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013, and as such the claimant will automatically be treated as making a new claim if their income drops sufficiently. Other changes to the claimant's circumstances, such as increased housing costs or a new child joining the household, could also mean renewed entitlement when otherwise income was too high, so claimants should also reclaim if any such circumstances occur, and transitional protection can be included again if this is within 3 months of the previous award ending.

As a continuation of the previous award (or claim), the transitional element may be eroded by any increases in the rates of elements previously included or by new elements now added, other than childcare costs element. But transitional protection could not be included in a new claim where the claimant has either become or ceased to be part of a joint claim.¹¹

Council tax reduction

The Council Tax Reduction (Scotland) Regulations 2021 (CTR(S) Regs 2021) included transitional elements as 'relevant payments' of UC for working age council tax reduction (CTR) purposes, and so treated them as unearned income.¹² The effect of this was that while those migrating to UC should in most cases be no worse off than they were on their legacy benefits due to inclusion of the transitional element, they could find that their CTR award reduced and so overall they were worse off.

From 10 November 2025, the CTR(S) Regs 2021 have been amended to remove the transitional element as a relevant UC payment.¹³ As such, now only the total amount of UC child elements will be treated as unearned income for CTR, or if the actual UC award is less than those combined elements only the amount awarded. Advisers should check to make sure local authorities have amended their client's CTR award from 10 November, and also if there are clients who maybe did not get any CTR due to the transitional element who may now qualify and make a new claim.

⁹ Reg 57 TP Regs 2014

¹⁰ Reg 57(2)(b) TP Regs 2014

¹¹ Reg 56(4) TP Regs 2014

¹² Reg 57(2)(d) CTR (S) Regs 2021

¹³ The Council Tax Reduction (Miscellaneous Amendment) (Scotland) (No. 5) Regulations 2025